

April 20, 1995

DOCKET NO. P-5133/NA-94-1183

ORDER GRANTING CERTIFICATE OF AUTHORITY AND REQUIRING FILINGS

: BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Joel Jacobs
Marshall Johnson
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by West Central
Transport Group LLC for a Certificate of
Authority to Provide Long Distance Service

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PROCEDURAL HISTORY

On December 22, 1994, West Central Transport Group LLC (West Central or the Company) filed an application for a certificate of authority to provide long distance service.

On February 1 and March 10, 1995, the Department of Public Service (the Department) filed comments.

On March 6, 1995, West Central filed reply comments.

The matter came before the Commission for consideration on April 4, 1995.

FINDINGS AND CONCLUSIONS

I. THE STATUTORY FRAMEWORK

Minnesota statutes require telecommunications carriers such as West Central to offer service to all Minnesota customers at a uniform price, except in a narrow range of cases.

Under Minn. Stat. § 237.74, subd. 2, no telecommunications carrier shall offer telecommunications service within the state upon terms or rates that are unreasonably discriminatory. Subd. 1 of that statute requires every telecommunications carrier to keep on file either a price list or a tariff for each service offered.

Minn. Stat. § 237.74, subd. 3 provides an exception to nondiscriminatory prices under particular circumstances. The statute allows prices unique to a particular customer or group of customers under two scenarios: "when differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers" or when "a uniform price should not be required because of market conditions."

II. THE COMPANY'S FILING

West Central proposes to offer high capacity point-to-point interexchange private line service, primarily between the points of presence of interexchange carriers (IXCs). Under West Central's proposal, the services would be offered on an individual case basis (ICB).

III. COMMENTS OF THE PARTIES

A. The Department

The Department recommended that the Commission grant West Central's request for a certificate of authority to offer long distance services, but require the Company to price the services through a published price list rather than through ICB pricing.

The Department argued that West Central's circumstances do not meet either of the tests for ICB pricing under Minn. Stat. § 237.74, subd. 3.

The Department reasoned that West Central should be able to offer the services under a uniform price list since its chief competitor, US WEST Communications, Inc. (US WEST), is able to offer a price list.

B. West Central

West Central argued that it should be allowed ICB pricing because it is offering these services to IXCs, who form a special, very sophisticated telecommunications customer group.

West Central argued that ICB pricing is necessary because each customer will have a unique cost of service and unique terms of service. If any other customer requests similar services, West Central will offer service to that customer on an identical basis.

According to West Central, the fact that US WEST is offering similar services on a general price list is not dispositive. US WEST is a huge, ubiquitous service provider while West Central is a new, small enterprise.

IV. COMMISSION ACTION

A. Summary of Commission Action

The Commission finds that West Central's proposed offering qualifies under the narrow range of exceptions to the statutory prohibition against discriminatory pricing, as long as certain filings are required of the Company.

B. Commission Decision

West Central has shown that it will be offering unique service applications at prices individualized for particular customers or groups of customers. The Company has affirmatively stated that it will offer the services on the same basis to any other customers who match the specifications of the offerings.

Market conditions indicate that ICB pricing is appropriate in this case. West Central is a small, new enterprise offering services to large, sophisticated, and highly competitive purchasers of telecommunications services. Although West Central's competitor, US WEST, is currently offering similar services on a price list basis, the Commission disagrees with the Department that this fact should dictate price listing for West Central in this case. First, US WEST abandoned ICB pricing of its own volition. Second, the extreme difference in market power between West Central and US WEST justifies different forms of pricing.

As the Commission has previously noted, ICB pricing is an exception to a strong policy of nondiscrimination in pricing. To ensure that this exception does not result in harm to ratepayers or the general public, the Commission will require the Company to submit several types of informational filings.

First, the Commission will require West Central to file copies of its private line price list, which may include provisions for ICB pricing. The price lists must include provisions requiring the Company to offer the same contract terms and rates to similarly situated customers. This measure will allow the Commission to ensure that unreasonable discrimination does not take place.

Second, the Commission will require the Company to file copies of its contracts with individual customers, with enough detail to verify the Company's estimation of incremental cost and a comparison of rates to incremental costs. This filing will allow the Commission to determine if West Central's ICB priced offerings cover the Company's incremental costs. Offering these competitive services to IXCs at prices which exceed incremental costs makes it more likely that they will be freely and fairly negotiated in the market place, and less likely that they will be discriminatory in nature.

Finally, the Commission will require West Central to file any contracts or related documents between the Company and any of its affiliates or related companies. The Department will review the documents, and if any improper dealing between the Company and its affiliate should occur, the Department will bring the facts to the attention of the Commission. This process will allow the Commission to monitor any possible cross-subsidization which could result in predatory, anti-competitive pricing.

C. Conclusion

The Commission has found that West Central's particular set of circumstances warrants an exception to the general policy against discriminatory pricing, as long as the Company provides the assurances required in the compliance filings. The compliance filings will allow the Department and the Commission to monitor West Central's ICB service offerings, ensuring that they are not predatory or against the public interest.

ORDER

1. The Commission grants West Central its request for a certificate of authority to provide dedicated, non-switched interexchange private line services. All relevant sections of the statutes, Commission rules and prior Commission Orders shall be applicable to this offering.
2. West Central shall serve all customers who request its service except where, due to technical limitations, it is unable to do so.
3. Within 30 days of the date of this Order West Central shall file copies of its private line price lists with the Commission and the Department. The price lists, which may include provisions for ICB pricing, shall include provisions requiring the same contract terms and rates for similarly situated customers.
4. Within 30 days of the date of this Order, or no later than five working days after a contract is entered into, West Central shall file copies of its contracts with individual customers with the Department. The contracts shall include enough detail to enable the Department to verify the estimation of incremental cost and whether or not rates exceed costs by a reasonable margin.
5. Within 30 days of the date of this Order, or no later than five working days after the contracts are entered into, all contracts and related documents between West Central and any of its affiliates or related companies shall be submitted to the Department for review.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)